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7 Attorneys for Defendants
8 HSBC MORTGAGE CORPORATION (USA) AND
9 HSBC BANK USA, N.A.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
14 Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
the general public,

15 Plaintiffs,

16 v.

17 HSBC Mortgage Corporation (USA);
18 HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

19 Defendants.
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Case No. C 07 2446 MMC [ECF]

**DECLARATION OF JEANETTE
JENNINGS IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, Jeanette Jennings, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
3 I could and would testify to the following:

4 2. I am employed by HSBC Bank USA, N.A. (hereinafter "HBUS"). My
5 corporate title is "Senior Vice President." My functional job title is "Group Director for Human
6 Resources." In my job, I supervise a group of Human Resources professionals. I, along with the
7 individuals I supervise, provide Human Resources services for HSBC Mortgage Corporation (USA)
8 (hereinafter "HMCU").

9 3. Although HBUS and HMCU use the same pay agent, HSBC Pay Services,
10 HMCU provides the funding that pays for its employees' compensation. In other words, HMCU has
11 a payroll that is separate from HBUS' payroll.

12 4. HMCU employees are not transferred to work for HBUS, nor are HBUS
13 employees transferred to work for HMCU.

14 5. Eight (8) of the twenty-two (22) written consent forms that have been filed in
15 this case come from individuals who are not HMCU or HBUS employees. Specifically, Jason
16 Brunn, Louis Candell, Sharon Ehly, Gregory Gehl, Barbara Harris, David Erik Johnson, Russell
17 Medley, and Patrick Miezian are not HMCU or HBUS employees.

18 6. Of the seventeen (17) declarations made by current or former HMCU
19 employees that were filed in support of Plaintiffs' Motion, ten (10) come from employees who work
20 or worked in California. Those employees are: Frederic Chaussy, Stephanie Chu, Dustin Cox,
21 Jason Henry, Stephany Hor, Ryan Kanazawa, Larry Lee, Christine Lim, Philip Wong, and Dennis
22 Yee.

23 7. The class or group of individuals described in Plaintiffs' Motion—Senior
24 Retail Mortgage Lending Consultants, Retail Mortgage Lending Consultants, and Premier Mortgage
25 Sales Officers—are HMCU employees.

26 8. I have reviewed pay records related to the compensation received by
27 following individuals from HMCU in various months in 2005 or 2006: Stephany Hor, Jason
28

Schultes, Ryan Kanazawa, Justin Henry, Dennis Yee, Philip Wong, Dustin Cox, Frederic Chaussy, and Christine Lim. The table below reflects the amounts reflected in the pay records I reviewed:

Name	Date	Amount
Stephany Hor	November 2005	at least \$2,757.70
Jason Schultes	December 2005	at least \$6,736.15
Ryan Kanazawa	April 2006	at least \$2,692.30
Justin Henry	June 2006	at least \$2,153.84
Dennis Yee	July 2006	at least \$2,800.47
Philip Wong	August 2006	at least \$5,719.70
Dustin Cox	September 2006	at least \$4,519.92
Frederic Chaussy	October 2006	at least \$3,076.92
Christine Lim	November 2006	at least \$1,592.30

9. In their Motion, Plaintiffs' counsel claims that all "loan officers" they seek to represent in this case are paid under the same compensation plan and commission schedule. *See* Plaintiffs' Motion for Conditional Certification at 8:7-9. However, this is not accurate. For example, Karen Flanagan and Larry Lee, who filed declarations in support of Plaintiffs' Motion, were paid annual base salaries with guaranteed minimum bonus payouts. Attached, as Exhibit 1, is a copy of the "HSBC Internal Correspondence" documenting that Ms. Flanagan received base salary and guaranteed bonuses and a copy of the letter sent to Mr. Lee confirming a similar base salary and guaranteed bonus arrangement.

10. Alysse Gora, who also filed a declaration in support of Plaintiffs' Motion, was employed in the same job as Ms. Flanagan and Mr. Lee—the Premier Mortgage Sales Officer position. Like Ms. Flanagan and Mr. Lee, she also received an annual base salary and minimum bonus payouts. Attached, as Exhibit 2, are print-outs of screens from the PeopleSoft database that HMCU uses to track, among other things, the type of compensation employees receive. These screens reflect that Ms. Gora worked as Premier Mortgage Sales Officer and received an annual base salary of \$50,000 and then \$70,000.

11. The compensation arrangements for Ms. Flanagan, Mr. Lee, and Ms. Gora is very different from the compensation received by other individuals who work under any version of the "HSBC Mortgage Corporation (USA) Retail Loan Consultant Incentive Plan," which provides a draw and commissions, but no base salary to those Senior Retail Mortgage Lending Consultants and Retail Mortgage Lending Consultants who do not work in the "private banking" part of HMCU's business.

12. Plaintiffs' counsel's claim that all "loan officers" they seek to represent in this case are paid under the same compensation plan and commission schedule is also inaccurate for another reason. Specifically, HMCU employs or has employed Retail Mortgage Lending Consultants who work or worked on the "private banking" side of the business. These individuals' compensation is or was covered by the "HSBC Mortgage Corporation (USA) Mortgage Sales Incentive Plan for Private Banking Sales." Attached, as Exhibit 3, is a copy of this incentive plan.

I declare under penalty of perjury under the laws of the States of California and New York and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge.

Executed this 18th day of January, 2008, in New York, New York.

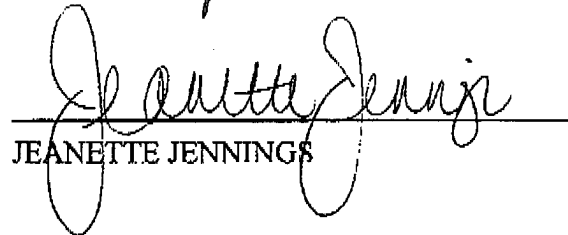

JEANETTE JENNINGS

EXHIBIT 1

HSBC Internal Correspondence

To: Karen Flanagan

From: Maria Ragusa
Resourcing and Employee Relations Officer

Date: September 15, 2005

Re: Premier Mortgage Sales Officer

I am pleased to confirm your transfer to the HSBC Premier Center in Rockville Centre as a Premier Mortgage Sales Officer, AVP, reporting directly to Michael Vasami, Senior Vice President with a regulatory reporting line to Eric Liboy effective October 1, 2005.

I would also like to outline the terms of your compensation, which will be based on your performance and production level and tied to the Mortgage Corporation's compensation plan and paid in accordance with the plan.

You will be paid an annual base salary of \$70,000. In addition, based on your October 1, 2005 transfer date to the Premier Center, you will be guaranteed minimum bonus payouts as follows:

4th quarter 2005 – full \$10,000
1st quarter 2006 – full \$10,000

In 2006, bonuses will be based on your overall production level, and you will be eligible to receive supplemental compensation, which will be based on your overall performance.

Overall, any compensation earned above the commissions is discretionary and will be based on incremental cross-sell and referrals.

Please sign this letter and return a signed copy of this letter to 525 5th Avenue, 12th floor as an acknowledgement of these terms and conditions of your transfer.

If you have any questions, please feel free to contact me at 212-525-7574.

Karen Flanagan

Date

cc: File

MORT001411

EXHIBIT 2

[New Window](#) | [Customize Page](#)

[Work Location](#) | [Job Information](#) | [Job Labor](#) | [Payroll](#) | [Salary Plan](#) | [Compensation](#)

Alysse Gora EMP ID: 30033293 Empl Ro

Work Location

Find Find

HR Status: Active Payroll Status: Active
 Effective Date: 03/27/2006 Sequence: 0 ☐
 Action / Reason: Transfer Position Change

Last Start Date: 08/02/1999 Termination Date:
 Expected Job End Date:
 Position Number: 00652367 Premier Mtge Sales Ofc Position Entry Date:
 ☐ Position Management Record

Regulatory Region: USA United States
 Company: 558 HSBC Mortgage Corporation(USA)
 Business Unit: US001 United States HBUS and HI
 Department: 801033-B Private Banking Department Entry Date:
 Location: 2HANSN Two Hanson Place
 Establishment ID: 05150 Kings County, NY Locations

Date Created:

[Job Data](#) | [Employment Data](#) | [Earnings Distribution](#) | [Benefits Program Participation](#)

[Work Location](#) | [Job Information](#) | [Job Labor](#) | [Payroll](#) | [Salary Plan](#) | [Compensation](#)

MORT001415



New Window | Customize Page |

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

Alysse Gora EMP ID: 30033293 Empl Re

Compensation Find First

Effective Date: 03/27/2006 Effective Sequence: 0 Job Indicator: Primary Job
Action / Reason: Transfer Position Change

Compensation Rate: 50,000.00 USD Frequency: A Annual

Comparative Information

Pay Rates

Default Pay Components Contract Change Prorate Option

Pay Components Customize | Find | First

Amounts Controls Changes Conversion

Rate Code	Seq	Comp Rate	Currency	Frequency	Percent	Rate
1 NAANNL	0	50,000.000000	USD	A		

Calculate Compensation

Job Data Employment Data Earnings Distribution Benefits Program Participation

Save Return to Search Notify Previous tab Next tab Refresh Update/Display Incl

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

MORT001417



New Window | Customize Page |

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

Alysse Gora EMP ID: 30033293 Empl Rc

Compensation Find First

Effective Date: 03/27/2006 Effective Sequence: 1 ☐ Job Indicator: Primary Job
 Action / Reason: Pay Rt Chg Adjustment

Compensation Rate: 70,000.00 USD Frequency: A Annual

☒ Comparative Information

☒ Pay Rates

Default Pay Components

Contract Change Prorate Option

Pay Components Customize Find First

Amounts	Controls	Changes	Conversion				
Rate Code	Seq	Comp Rate	Currency	Frequency	Percent	Rate	
1 NAANNL	0	70,000.000000	USD	A			

Calculate Compensation

Job Data Employment Data Earnings Distribution Benefits Program Participation

Save Return to Search Notify Previous tab Next tab Refresh Update/Display Incl

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

MORT001418

EXHIBIT 3



HSBC Mortgage Corporation (USA)

Mortgage Sales Incentive Plan

for

Private Banking Sales

Plan Document & Policy Guide

Effective July 1, 2007

This is not an employment contract. Participation in this plan or receipt of award payment does not constitute a contract of employment. You are an at will employee. The plan does not give any employee a right or claim to an award under the plan. Management reserves the right to change or discontinue the plan at any time without prior notification.

MORT001385

Introduction

The HSBC Mortgage Corp. (USA) Mortgage Sales Incentive Plan (the "Plan") for Private Banking Mortgage Loan Consultants ("Participants") is designed to reward individuals for their contribution to HSBC Mortgage Corp. (USA) achievements and for attaining and exceeding our defined business goals.

Our philosophy is to ensure our compensation system rewards top performers who demonstrate a continued commitment to achieve and exceed corporate objectives of profitable growth and customer care. As such, this incentive Plan will have an unlimited earnings opportunity. The greater the performance, the more the individual will earn.

Plan Period

The Plan period covered is for loan fundings from July 1, 2007 through December 31, 2007. All previous incentive Plans for the Private Banking Mortgage Loan Consultant positions are made obsolete with the implementation of this Plan. Plan period means the period of time that a participant's goals and performance will be measured and awarded; this is a monthly plan, with performance measured each calendar month.

Eligibility

All regular, full-time and part-time Private Banking Mortgage Loan Consultants (Participants) in HSBC Mortgage Corp. (USA) are eligible to participate in this commission incentive Plan. A Participant in this Plan will not be eligible to participate in any other incentive plan of HSBC or any affiliate. Participants agree to and accept all the provisions, terms and conditions of the Plan.

How The Plan Works

Eligible Participants will participate in this monthly commission incentive Plan that has been tailored to support the HSBC Mortgage Corp. (USA) Sales department's business strategy.

Participants have the opportunity to earn commission incentives based on the following:

- ✓ Basis points on calendar month funded dollar volume or number of calendar month funded units (whichever is greater), minus any applicable draw, exclusions and/or deductions, with unlimited earnings potential.

Commission Incentive Schedule

Commissions will be awarded on a monthly basis according to the following schedule:

Loan Type	Monthly Funded Dollar Volume	Basis Points	Commission Rate
ALL	ALL	22 bp	.0022%

NOTE:

- 1) Individual loans greater than \$1,500,000 will receive a maximum credit of \$1,500,000 towards commission incentive award calculations.
- 2) Home Equity funded dollar volume levels will be based upon the amount of capital withdrawn at funding. Those lines closed but no capital drawn at closing are subject to a minimum \$500.00 incentive payment (effective July 1st, 2007)

Commission Calculation:

$$(A \times B) + C - D$$

- A. = the Participant's dollar amount of funded First Mortgage Funded Loan Volume and the dollar amount of capital withdrawn at closing for HELOCS and HELOANS for the calendar month.
- B. = the Participant's basis points per calendar month on First Mortgages Funded Loan Volume and dollar amount of capital withdrawn at closing for HELOCS and HELOANS as specified by the Commission Incentive Schedule, based on the lowest threshold achieved between volume and number of loans, with a \$500 minimum payment on HELOCS.

- C. = \$10.00 for each Electronic Funds Transfer (EFT) payment set-up.
- D. = Less Participant's monthly Draw and/or deficits determined in accordance with standard HSBC procedure and representing the recoverable advance against commissions.

Example:

First Mortgage and HELOC/HELOAN Loan Volume = \$2,500,000

Draw = \$1,000

$(\$2,500,000 \times .0022) - \$1,000 = \$4,500$ Incentive Award

Commission Calculation Exclusions:

Employee Loans

A Participant will not receive commission incentives on employee loans. These loans will be excluded from the total funded dollar threshold.

House Account

A Participant will not receive commission incentives on loans that receive any unique rate/fee/underwriting concession request as requested from management of HSBC. These loans will be excluded from the total funded dollar threshold.

Loans in the Pipeline

A Participant will not receive commission incentives on rate locked loan applications taken in process but not yet closed and/or funded.

Withdrawn/Declined Loan due to Errors/Omissions

If HSBC incurs a loss or expense as a result of a Participants' error or omission (known as a "Reportable Event", including but not limited to failure to collect required fees, falsification of records, negligence, unauthorized activities, inefficiency, violations of the HSBC Statement of Principles and Code of Ethics.), the following action may be taken in addition to any other action HSBC deems appropriate. A Participant's commission incentives shall be reduced by an amount equal to the loss or expense incurred by HSBC as a result of the Reportable Event. If necessary, this reduction shall carry forward to commission incentives payable in future months and disciplinary action up to and including termination may result.

Total Cash Compensation

The Private Banking Mortgage Loan Consultant position is considered "highly leveraged." As such, the Plan is designed to recognize and pay high performers substantially better than our competition. HSBC regularly reviews the market conditions to ensure a competitive compensation package is in place. As a result of HSBC's regular review of the total cash compensation package, incentive opportunity adjustments may occur when appropriate.

Plan Policies and Definitions

Affiliate

Affiliate means HSBC and any entity that controls, is controlled by, or is under common control of HSBC.

Annual Merit Reviews

Although performance reviews will be conducted annually, Participant's eligible to participate in the Plan will not be eligible to receive regular annual merit increases, due to being a commissioned job.

Award Payouts

At the close of each performance period, Financial Administration shall determine the amount of commission incentives for each Participant on loans funded in the previous month for approval of the Plan Administrator. Payments for the Incentive Award will be made with the first reasonable pay period following the finalization of calculations. Commission incentives are subject to withholding of all amounts required by law to be withheld, including, without limitation, Federal, state and local income taxes and social security taxes.

Benefit Impacts

Please refer to the Benefits overview found on Connect, for the impact of incentive awards received under this Plan.

Claims

Those seeking to bring a claim regarding or under the terms of this Plan must notify and serve HSBC with the claim within one (1) year from when said claim accrued or within one (1) year after termination or separation from HSBC, whichever is shorter.

Confidentiality

The Incentive Plan and its terms are proprietary and confidential. Participants agree not to disclose the Plan and/or its terms to any person not employed by or representing by HSBC or its affiliates during the term of their employment and for twelve (12) months after employment is terminated.

Corrective Action

A participant, who is placed on corrective action plan, may be eligible to receive his/her commission incentive based on the commission incentive schedule and eligibility, while still employed by HSBC.

Deficits

A deficit is created when the Participant does not have sufficient funded production volume to generate commission incentives to cover any Draw received. If a Participant does not originate enough loan volume and net contribution to cover his/her Draw in any calendar month, the deficit balance will be carried forward to subsequent months and commission incentives will be reduced by any remaining deficit, until the full deficit is recovered, if deficit continues the Draw may be adjusted accordingly. (See "Draw").

Disqualification / Prohibited Conduct

A Participant may be disqualified from participation in this Plan for any unethical act, including falsification of records, manipulation of accounts, breach of Company policy, and/or any other conduct that, in the opinion of the HSBC, is sufficient reason for disqualification, including poor performance. Any such disqualification from participation in the Plan is in addition to, and not in lieu of, any other disciplinary action determined appropriate by HSBC up to and including termination of employment.

As a condition of receiving commission incentives under the Plan, a Participant shall not originate, broker, purchase, sell or otherwise deal in mortgage loans on behalf of any person or entity other than HSBC Mortgage Corp. (USA) or such other entities as authorized by the Plan Administrator and shall not accept any compensation or other benefit with respect to a mortgage application for a mortgage or other Product, other than compensation and benefits received from HSBC Mortgage Corp. (USA) or such other entities as authorized by the Plan Administrator.

A Participant is strictly prohibited from:

1. Paying or receiving compensation or gifts, in any form, to or from, any individual or company, with the exception of those within HSBC policies
2. Engaging in any conduct, which violates any law or regulation, or any policy of HSBC.
3. Engaging in any relationship that results in a controlled vendor referral relationship.

Draw

A bi-weekly commission advance. The annualized draw will be prorated to the respective number of pay periods within the calendar year; draws may be adjusted up or down, based on current twelve month rolling historical funding average upon review of Financial Administration, Human Resources and approval of the Plan Administrator. A draw will only be considered non-recoverable during established pro-rata periods as determined by the Plan Administrator and/or Human Resources. (See Draw Policy under separate cover).

Ethics

All participants will conduct themselves in the highest ethical manner to include adherence to all Company, business unit, and department policies, procedures, and guidelines.

Leave of Absence (LOA)

A Participant placed on an approved leave of absence will be handled as follows:

1. Commission incentives will be paid resulting from Retail First Mortgage Funded Loan Volume and the dollar amount of capital withdrawn at closing for HELOCS and HELOANS generated by the Participant prior to commencement of the LOA. These incentive awards will be offset against any deficits, which existed at the beginning of the approved LOA.
2. During the LOA a non-recoverable draw period may be established based on 12 month rolling average.
3. Once the Participant returns from the approved LOA, the recoverable draw may be re-established.

Marketing Agreements ("Desk Rentals" -or- Alternative Lending Relationships)

Agreement for those eligible Participants, assigned to Alternative Lending Relationships/office locations. (See Alternative Lending Relationship Agreement/Criteria).

New Hires / Reinstatements / Transfers In

Newly hired, rehired, or employees who transfer into the Private Banking Mortgage Loan Consultant position will be eligible to participate in the Plan immediately upon their hire/transfer date according to the established schedule.

Pipeline

A loan application in process, but not yet closed and/or funded.

Plan Administrator

The Plan Administrator shall be the SVP, Financial Administration and/or the SVP Chief Accounting Officer of HSBC Mortgage Corp. (USA). The Plan Administrator shall adopt such rules and regulations for administration of the Plan as he/she deems advisable, conclusively interpret the Plan and such rules and regulations, and conclusively decide all issues regarding the Plan. The determination(s) of the Plan Administrator shall be final, conclusive and binding.

Promotions / Transfer Outs/Retirements/Death

Participants who are promoted into a new position or who transfer to another HSBC business unit, not covered by this Plan, or terminate employment due to retirement or death, will be eligible to receive an incentive award based on their performance against the Plan schedule/criteria.

Solicitation

Under the terms of this Plan, for a period of twelve (12) months after termination of your employment for any reason, you as a Plan participant, agree to not, directly or indirectly, on your own behalf or on behalf of any other person(s), solicit, induce, recruit or encourage, or attempt to do so, any of HSBC's employees to terminate their employment with HSBC and you further agree to not participate in the hiring of any employee of HSBC or any individual who was employed by HSBC at any time during the twelve (12) month period prior to such hiring. You further acknowledge that violating this provision will have serious adverse consequences on HSBC's business that cannot be adequately compensated by monetary damages alone. In the event of your violation or threatened violation of this section, you agree that HSBC, without limiting any other legal or equitable remedies available to it, shall be entitled to equitable relief by injunction or otherwise from any court of competent jurisdiction pending final resolution of the matter on the merits.

Termination of Employment

The employment of a Participant with HSBC and their participation in the Plan may be terminated at any time. No promise or representation, either expressed or implied, is made with respect to continued employment, transfer or promotion because of participation in the Plan. If eligible, a participant who terminates employment with HSBC may be eligible for commission incentives based on their eligible loans funded in the month of termination, but not beyond.

Transferred Pipeline

The Pipeline applicable to an individual Participant who has resigned or been terminated with HSBC that may be allocated to one or more other Participants at management approval only, if the loans are transferred prior to a Submission Approved (Status Code < 3400).

These loans will be eligible for commission incentives in accordance with the Commission Incentive Schedule.

Loans that fall within Status Code equal to 3400 (Submission Approved) < 4050 (Authorized to Close) require the written approval of the Plan Administrator prior to transfer. In no case shall a loan be transferred with a Status Code of 4050 (Authorized to Close) or greater.

Commission incentives will not be paid on the same loan to different Participants without the written approval and/or licensing referral form.

This is not an employment contract. Participation in this plan or receipt of award payment does not constitute a contract of employment. You are an at will employee. The plan does not give any employee a right or claim to an award under the plan. Management reserves the right to change or discontinue the plan at any time without prior notification.

I ACKNOWLEDGE RECEIPT AND UNDERSTANDING OF THIS INCENTIVE PLAN. I UNDERSTAND THAT COMMISSIONS/OVERRIDES AWARDED UNDER THE PLAN ARE NOT EARNED BY ME UNTIL PAID.

Name _____

Date _____

Signature _____

This is not an employment contract. Participation in this plan or receipt of award payment does not constitute a contract of employment. You are an at will employee. The plan does not give any employee a right or claim to an award under the plan. Management reserves the right to change or discontinue the plan at any time without prior notification.